

## Remarks

Claims 26-52 are now pending in this application. Applicants have cancelled claims 1-25 and present claims 26-52 to clarify the present invention. Applicants respectfully request favorable reconsideration of this application.

The Examiner rejected claims 1-6 and 8-25 under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 4,638,737 to McIngvale. The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over McIngvale.

McIngvale does not disclose the invention recited in claims 26-52 since, among other things, McIngvale does not disclose a first explosive configured to result in acceleration of a plurality of projectiles in a direction essentially radial to a longitudinal axis of the warhead. Rather, McIngvale discloses a missile that includes submissiles that are held in an alignment fixture. The submissiles continued in the travel direction after release by a spring force.

Additionally, McIngvale does not disclose a control configured to configured to control detonation and target selection of the warhead and to receive signals permitting modification of at least one of target selection and desired effect of the warhead during firing or in flight. McIngvale discloses a beamrider and inertial sensor configured to direct the missile towards the target.

In view of the above, McIngvale does not disclose all elements of the invention recited in

claims 26-52. Since McIngvale does not disclose all elements of the invention recited in claims 26-52, the invention recited in claims 26-52, is not properly rejected under 35 U.S.C. § 102(b). For an anticipation rejection under 35 U.S.C. § 102(b) no difference may exist between the claimed invention and the reference disclosure. *See Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q. 841 (C.A.F.C. 1984).

Along these lines, anticipation requires the disclosure, in a cited reference, of each and every recitation, as set forth in the claims. *See Hodosh v. Block Drug Co.*, 229 U.S.P.Q. 182 (Fed. Cir. 1986); *Titanium Metals Corp. v. Banner*, 227 U.S.P.Q. 773 (Fed. Cir. 1985); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986); and *Akzo N.V. v. U.S. International Trade Commissioner*, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986).

McIngvale does not suggest the invention recited in claims 26-52 since, among other things, McIngvale does not suggest a first explosive configured to result in acceleration of a plurality of projectiles in a direction essentially radial to a longitudinal axis of the warhead. In fact, such a radial acceleration of the submissile suggested by McIngvale would be contrary to the purpose of McIngvale. Along these lines, McIngvale suggests a missile is for use against active armor. When the missile casing opens, the submissiles continue towards the target. If the submissiles are radially spread out, they would not adequately activate the active armour, which is typically segmented and requires a certain force to be directed at each segment. Thus, McIngvale teaches away from the claimed invention.

While McIngvale suggests a missile for combating large, heavy slow targets with active

armor, the claimed invention can defeat a variety of targets, including large targets, such as planes, and small targets, such as missiles. This is due at least in part to the control that can control the operation of the warhead and the radial spread of the projectiles. The warhead can be guided towards a target during firing and in flight toward a different target than was originally intended. The detonation of the first and second explosives can be carried out in a controlled manner. As such, the first explosive is particularly useful when defeating small, rapid targets by detonating to spread the projectiles. On the other hand, the second explosive is more useful when defeating larger targets.

The control can permit the warhead to be controlled by a combat control or other user. This can permit operation of the warhead and target selection to be controlled. On the other hand, McIngvale suggests preset control of a missile and does not suggest modification of the missile. As a result, McIngvale does not suggest the more versatile warhead according to the claimed invention.

In view of the above, the reference relied upon in the office action does not disclose or suggest patentable features of the claimed invention. Therefore, the reference relied upon in the office action does not anticipate the claimed invention or make the claimed invention obvious. Accordingly, Applicants respectfully request withdrawal of the rejections based upon the cited reference.

In conclusion, Applicants respectfully request favorable reconsideration of this case and early issuance of the Notice of Allowance.

If an interview would advance the prosecution of this case, Applicants urge the Examiner to contact the undersigned at the telephone number listed below.

The undersigned authorizes the Commissioner to charge fee insufficiency and credit overpayment associated with this communication to Deposit Account No. 22-0261.

Dated: July 13, 2009

Respectfully submitted,

Electronic signature: /Eric J. Franklin/  
Eric J. Franklin

Registration No.: 37,134  
VENABLE LLP  
P.O. Box 34385  
Washington, DC 20043-9998  
(202) 344-4000  
(202) 344-8300 (Fax)  
Attorney/Agent For Applicant